



COMMONWEALTH OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF INSURANCE

May 3, 2002

CIRCULAR LETTER NO. E-05-1651-2002

TO ALL INSURERS AUTHORIZED TO TRANSACT PROPERTY AND CASUALTY
INSURANCE BUSINESS IN PUERTO RICO

**SUBJECT: RECOUPMENT OF ASSESSMENTS PAID TO THE PUERTO RICO PROPERTY
AND CASUALTY INSURANCE GUARANTY ASSOCIATION**

Gentlemen:

Article 38.160 of the Insurance Code of Puerto Rico (the "Code"), 26 L.P.R.A sec. 3816, governs the recovery of assessments levied and paid by member insurers to the Puerto Rico Property and Casualty Insurance Guaranty Association (the "Association") on account of liquidation proceedings.

In accordance with said Article, the rates and premiums charged for insurance policies to which Chapter 38 of the Code applies shall include a portion that is sufficient to recover an amount equal to the sums that the member insurer pays to the Association, less any sums reimbursed by the Association to the member insurer. Such rates will not be considered excessive on account of such portion. The amounts to be recovered pursuant to Article 38.160 of the Code will be determined from time to time by the Commissioner so that the recoveries are made on a reasonable basis and within a reasonable period of time.

Pursuant to the above mentioned legal provision every member insurer of the Association shall commence to recover, on the effective date indicated in item one (1) below, the amount paid to the Association due to any existent insolvencies.

The recoveries will be made following the procedures indicated below:

1. Recoveries will be made commencing with all new policies and additional premium endorsements with an effective date of July 1, 2002, and renewals with an effective date of August 1, 2002. The term "policies" includes master policies and the individual certificates of insurance issued under said master policies.
2. Pursuant to Articles 38.030 and 38.160 of the Code, the recoveries apply to all policies except the ones belonging to the following classes of insurance: life, disability, mortgage loan insurance, financial guaranty surety (except fidelity insurance covering public employees), warranty insurance, title insurance and ocean marine insurance.
3. The recoveries also apply to installment premiums of multiple years policies which become due after the effective date of this Circular Letter, subject to the conditions of the applicable filings or deviations approved by this Office, pursuant to which the policies were issued.
4. The recovery will be made by applying a surcharge factor of one tenths of one percent (.1%) to the premiums written on account of new or renewal policies or any additional premium endorsements issued thereto for account one (automobile insurance) and nine tenths of one percent (.9%) for account two (all other classes of insurance to which Chapter 38 of the Code applies). The term "premiums written", as used in this Circular Letter, refers to "direct net premium written" as defined in Article 38.050 (9) of the Code.

For those policies subject to premium payment plans, the surcharge factor must be applied evenly to each installment payment.

5. The mandatory endorsement entitled "Recovery of Assessments Paid to the Puerto Rico Property and Casualty Insurance Guaranty Association" (copy enclosed) must be attached to the master policies and certificates to which recoveries apply. This endorsement will not require the countersignature of the president of the insurer nor of any of the officers.

As an alternative, the following text or its equivalent Spanish official version may be inserted in the certificate itself in lieu of attaching the mandatory endorsement to the individual certificate:

"The total amount charged for this certificate includes, in addition to the premium, an amount determined by the Commissioner of Insurance of Puerto Rico for the purpose of recovering the unreimbursed assessments paid by the Company to the Puerto Rico Property and Casualty Insurance Guaranty Association. The

portion paid, but not yet earned, of that amount will be returned in the event this certificate is cancelled.”

6. Regarding endorsements requiring additional premium, the recovery surcharge will be applied to those which are attached to new or renewal policies issued on or after the corresponding effective date stipulated in item 1 of this Circular Letter. For those endorsements attached to policies with an effective date prior to the effective date stipulated herein, no surcharge will be applied, until the renewal date of the policy (for one year policies) or until the next anniversary of the policy (for multi-year policies) as long as a surcharge has not been previously applied to said policies. On the other hand, if a surcharge was applied to those policies, the surcharge factors stipulated herein will be applied pursuant to the terms of this Circular Letter.

The amounts recovered pursuant to the procedures indicated in this Circular Letter shall be subject to the establishment of a reserve similar to the unearned premium reserve required in Article 5.040 of the Code. The insurer must inform the Commissioner the method selected for the computation of said reserve and shall not change this method without the Commissioner's prior approval. In lieu of this method, the liability representing the unearned portion of the recoveries may be determined by applying the surcharge factor to the total unearned premiums reserve of the policies subject to the recovery.

7. This reserve will be presented by the insurer together with the unearned premium reserve in the annual statement. At the option of the insurer, the reserve for the unearned portion of the amounts recovered may be included on page 3, line 22, "Aggregate write-ins for liabilities", of the annual statement. If this option is selected, said unearned amount should be included in lines 2201, 2202 or 2203 of said page 3 with the following description: "Unearned portion of amounts recovered pursuant to Article 38.160 of the Insurance Code of Puerto Rico."
8. The unearned portion of any amount recovered, as indicated herein will be returned by the insurer together with any applicable return premium in the event a return premium endorsement is issued or if the policy is cancelled. The amount of the recovery to be returned will be calculated based on the total amount of the return premium of said policy, including the additional premium on account of endorsements.
9. The recoveries will not be subject to the payment of commissions or any other fees or assessments based on premiums such as, but not limited to, fees paid to ISO or similar rating organizations, guaranty fund assessments, premium taxes, etc., nor will they be considered as premiums subject to reinsurance transactions.

The amounts of recoveries must not be included in the statistical reports submitted by insurers to statistical agents or to Rating Organizations.

10. The amount to be recovered from a specific policy or additional premium endorsement will be separately and clearly indicated in the face of the invoice of the policy or endorsement or, at the option of the insurer, it may also be included in the declaration page or as an additional endorsement to the policy. In all cases the following explanatory remark shall be included in the face of the document in which the recovery is noted:

“This amount is imposed in order to recover the amounts previously paid by (include name of insurer) to the Puerto Rico Property and Casualty Insurance Guaranty Association. Please refer to the Official Mandatory Endorsement Number _____, attached to and made part of this policy.”

11. The provisions of Rules XXIX and LV of the Regulations of the Code will apply to the amount to be recovered as if it were the normal premium of the applicable policy or endorsement.
12. The appropriate manual rounding rule will be used in computing the amount to be recovered. Nevertheless, if the amount to be recovered from a specific policy or endorsement is less than \$1.00, no surcharge will be applied to that policy or endorsement. For the computation of the surcharge the rounding rule should be applied to the total premium of the policy and not to the premiums of each individual coverage included in the policy.
13. Each insurer must file with the Commissioner of Insurance a sworn semiannual report for the semester ending on June 30 of each year and an annual sworn report for the complete calendar year indicating the amounts recovered pursuant to Article 38.160 of the Code during the period for which the report is rendered. The report and sworn statement must be submitted to this Office within forty five (45) days after the end of each applicable period, in the form to be prescribed by the Commissioner. All supporting data and statistics shall be maintained by each insurer and must be readily available for inspection by the Commissioner.
14. Each insurer shall transmit the pertinent instructions to their general agents and policy writing agents so that the provisions for this Circular Letter are complied with by the persons issuing and processing policies and endorsements on behalf of the insurer. Also they should be instructed so that recoveries be given the same treatment as that given to premiums, pursuant to Article 9.380 of the Code.

Those insurers who have not recovered the assessments paid to the Association for the liquidation proceedings that were taking place on or before December 31, 2001, may continue recovering those assessments in the manner in which they are currently being recovered until the effective date set forth herein. As of the effective date of this Circular Letter and thereafter, those recoveries will be made by applying the surcharge factors herein established.

In the event of the cancellation of a policy or in the event a premium is returned, the amount of the recovery to be returned, will be computed by applying the surcharge factor used at the moment that the policy was originally issued.

Strict compliance with the provisions of this Circular Letter is required from all members insurers in recovering assessments paid to the Association. Non compliance with these provisions will be considered as noncompliance with an order issued by the Commissioner of Insurance and therefore will be subject to the applicable sanctions.

Cordially yours,



Fermín M. Contreras Gómez
Commissioner of Insurance

DO/mlm

Enclosures

OFFICIAL MANDATORY ENDORSEMENT**ISSUED PURSUANT TO SECTION 38.160 OF THE INSURANCE CODE
OF PUERTO RICO****RECOVERY OF ASSESSMENTS PAID TO THE PUERTO RICO PROPERTY AND
CASUALTY INSURANCE GUARANTY ASSOCIATION**

It is hereby understood and agreed that:

1. The total amount charged for this policy and any endorsement thereof includes, in addition to the premium, an amount determined by the Commissioner of Insurance of Puerto Rico for the purpose of recovering the unreimbursed assessments paid by the Company to the Puerto Rico Property and Casualty Insurance Guaranty Association.
2. The payment of the total amount referred to in item 1 above, or of the applicable amount under a payment plan pursuant to Rule XXIX of the Regulations of the Insurance Code of Puerto Rico, is required for a personal policy to become effective.
3. The payment of the total amount referred to in item 1 above is required for a commercial policy to remain in force, as provided for under Rule LV of the Regulations of the Insurance Code of Puerto Rico.
4. The portion paid, but not yet earned, of the total amount referred to in item 1 above will be returned in the event this policy is canceled.

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ENDOSO OFICIAL OBLIGATORIO

**EMITIDO AL AMPARO DEL ARTICULO 38.160 DEL CODIGO DE SEGUROS
DE PUERTO RICO**

**RECOBRO DE SUMAS PAGADAS A LA ASOCIACION DE GARANTIA DE
SEGUROS MISCELANEOS DE PUERTO RICO**

Por la presente se entiende y conviene que esta póliza queda enmendada según se indica a continuación:

1. El importe total cargado por esta póliza o cualquier endoso a la misma incluye, además de la prima, una cantidad fijada por el Comisionado de Seguros de Puerto Rico para recobrar las sumas pagadas por la compañía a la Asociación de Garantía de Seguros Misceláneos de Puerto Rico y que no hayan sido reembolsadas por la misma.
2. Conforme a lo que establece la Regla XXIX del Reglamento del Código de Seguros de Puerto Rico, el pago del importe total al que se hace referencia en el apartado 1, o la cantidad aplicable bajo un plan de pago, es necesario para que pueda entrar en vigor una póliza de seguro personal.
3. El pago del importe total al que se hace referencia en el apartado 1, es necesario para que se mantenga en vigor una póliza comercial, según lo establece la Regla LV del Reglamento del Código de Seguros de Puerto Rico.
4. La porción pagada y no devengada de la cantidad indicada en el apartado 1 estará sujeta a devolución en la eventualidad de la cancelación de esta póliza.

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